

(2018) 12 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) 8222 Of 2018

Union Of India And 3 Ors

APPELLANT

Vs

Partha Das And 2 Ors

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Citation : (2018) 12 GAU CK 0005

Hon'ble Judges : A.S. Bopanna, CJ; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : B K Das, J L Sarkar

Final Decision : Disposed Off

Judgement

Heard Mr. B.K.Das, learned counsel for the petitioners. Also heard Dr. J.L. Sarkar, learned counsel assisted by Mr. G.J. Sarma, learned counsel for Respondent No.1.

The petitioners are before this Court assailing the order dated 20.07.2018 passed by the Central Administrative Tribunal ("CAT" for short) in O.A. No. 040/00417/2016. The private respondent herein was before the CAT seeking that the petitioners be directed to absorb the respondent in Group-D post of the Railways under the Scheme as laid down by the Railway Board on 3.5.2006 and effect be given from the date when his juniors who were on roll were absorbed. Consequential prayer has also been sought in the application. The CAT having considered the rival contentions was of the opinion that the respondents herein was entitled to such absorption and, in that view, directed the petitioners herein to consider the case of the private respondent herein for absorption in Group-D post and to give him appointment if he fulfills all other conditions as is required by the rules.

The learned counsel representing the petitioners, while assailing the order, would contend that the scheme was initially provided for such recruitment in Group-D category by communication dated 30.05.2000 (Annexure-1 to the petition). In that regard, it is pointed out that the requirement thereof was that such

employee should have completed three years as on 10.06.1997 and should still be on the roll subject to the fulfillment of other conditions relating to the education, etc. It is further pointed out that through subsequent notification dated 03.05.2006, though the period of minimum requirement of three years service as on 10.06.1997 had been diluted, the condition that such employee should be on the roll is still a pre-requirement. Hence, he contends that as on the date when the Union had sent the list of the persons whose cases were required to be absorbed, the respondent herein was not on the roll. In that regard, a reference is made to the communication of the Union dated 24.11.2010 and it is further pointed out that the respondent herein had discontinued his service on 31.7.2009. Hence, he contends that the respondent herein does not fulfill the requirement of being on the roll as on 24.11.2010 and, as such, the question of consideration of the case of the respondent would not arise as the office order absorbing the service of the other persons whose names had been recommended was made on 7.12.2010, on which date also, the respondent was not in service.

The learned counsel for the private respondent would, however, try to sustain the order passed by the CAT and the contention as put forth is sought to be reiterated.

In the light of the rival contentions, the requirement as contained in the circular/notification dated 3.5.2006 would become relevant at this point of time. In that view, the same is extracted herein for easy reference :

"3. The matter has been considered by the Board and it has now been decided that Railways with approval of General Manager may consider absorption of those staff of quasi administrative office/Organisation who were on roll as on 10.6.97 and are still on roll subject to fulfillment of other conditions as laid down in Board's letter *ibid.*".

A perusal of the same would indicate that the employee to be entitled for absorption should be on roll as on 10.06.97 and still on the roll when the notification dated 3.5.2006 was issued. As on the date of notification dated 3.5.2006, the private respondent herein was in service. As per admitted case, he was not in service from 31.07.2009. Therefore, the only question is as to whether the benefit of absorption would be denied to the respondent merely because as, on the date when the Union forwarded the list on 24.11.2010, the respondent was not on the roll. In our considered opinion, the benefit available to the employee would be on the date of the notification, namely 3.5.2006, and in the instant case, the respondent was on the roll as on the said date and it was only discontinued on 31.07.2009. Merely because the Union had sent the list on 24.11.2010, the benefit which had already accrued to the respondent as on the date of issue of the notification on 3.5.2006 cannot be taken away. If this aspect of the matter is taken note and the order dated 20.7.2018 passed by the CAT is taken into consideration, it is noticed that the CAT has also taken into consideration this aspect while arriving at the conclusion and in that view, there is no error committed by the CAT so as to call for interference in this petition.

Accordingly, the petition being devoid of merit, stands disposed of.